Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Notice of Inquiry Concerning a Review	)	CC Docket No. 02-39
of the Equal Access and Nondiscrimination	)	
Obligations Applicable to Local Exchange	)	
Carriers	)	

REPLY COMMENTS OF QWEST SERVICES CORPORATION

Five years ago, Qwest Services Corporation ("Qwest") filed comments urging that to the extent 47 U.S.C. Section 251(g) incorporates equal access and nondiscrimination interconnection restrictions and obligations stemming from the AT&T Modification of Final Judgment ("MFJ") Consent Decree, it should be explicitly superseded by the Federal Communications Commission ("Commission"). Qwest stressed that the obligations imposed in the MFJ proceeding, and 251(g)'s reference to those obligations, were not meant to be a permanent feature in federal regulation and that the time had come for their elimination.[1] Qwest's position has not changed.[2]

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[1] *See* Reply Comments of Qwest Services Corporation, CC Docket No. 02-39, filed June 10, 2002 ("Qwest 2002 Reply Comments") in response to *In the Matter of Notice of Inquiry Concerning a Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers,* Notice of Inquiry, 17 FCC Rcd. 4015 (2002) ("*2002 Notice of Inquiry*"). Other carriers filed similar comments.

[2] To the extent that Section 251(g) addresses matters associated with pre-existing regulations stemming from other sources, Qwest is on record stating that regulatory reforms are necessary with respect to such matters, but that blanket "forbearance" from 251(g)'s referenced requirements is not in the public interest absent the implementation of a disciplined, economically-rational regulatory regime. *See In the Matter of Petition of Core Communications, Inc. for Forbearance under 47 USC Section 160(c) from Rate Regulation Pursuant to Section 251(g) and for Forbearance from the Rate Averaging and Integration Regulation Pursuant to 254(g),* WC Docket No. 06-100, Opposition of Qwest Communications International Inc. to Petition of Core Communications for Forbearance, filed June 5, 2006 and Comments of Qwest Communications International Inc. on Application for Review, filed Apr. 12, 2007.

Qwest now joins those commentors that either again, or for the first time, urge the Commission to announce that the MFJ equal access and interconnection provisions are superseded because the Telecommunications Act of 1996 and its aftermath have rendered the MFJ requirements superfluous,[3] obsolete,[4] counterproductive,[5] and anachronistic.[6] Neither current market configurations, nor speculative future market dysfunctions, warrant retaining these MFJ requirements. Indeed, the retention of such requirements simply inculcates a lack of parity,[7] as well as unwarranted costs and inefficiencies,[8] into what should be increasingly a regulatory environment devoid of marginal regulation[9] and devoted to the extension of new and advanced services.[10]

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[3] *See* AT&T Inc. ("AT&T") comments, filed May 29, 2007 at 1.

[4] *See* Time Warner Cable ("Time Warner") comments, filed May 29, 2007 at 2. *Compare* Qwest 2002 Reply Comments at 3 ("There is no reason to continue in force the consent decree restrictions carried forward by Section 251(g) because they have been rendered obsolete by the more current regulations adopted by the FCC in its implementation of the 1996 Act.").

[5] *See* Verizon comments, filed May 29, 2007 at 1. *Compare* Qwest 2002 Reply Comments at 3 ("The FCC's equal access rules are extensive and comprehensive, and the decrees, now nearly twenty-years old, are either unnecessary or counterproductive.").

[6] *See* United States Telecom Association ("USTA") comments, filed May 29, 2007 at 13.

[7] *See* Time Warner at 8 (in such a robustly competitive marketplace as currently exists, "it makes no sense for one set of providers to be free from regulations borne by others," referencing the fact that Congress exempted wireless carriers from equal access obligations); USTA at 12; Verizon at 9 ("the equal access and nondiscrimination rules in fact discriminate against the Bell Companies and run counter to the Commission's goal of ensuring a level playing field for all competitors.").

[8] *See* AT&T at 6 (providing estimated costs associated with equal access scripting alone); Time Warner at 8 (the "differential imposition of equal access requirements imposes needless costs and burdens on selected competitors, and accordingly should be remedied through the prompt elimination of such obligations"); USTA at 5-6; Verizon at 10.

[9] Congress directed the Commission to review all of its rules on a biennial basis to determine which rules are no longer necessary or productive, 47 U.S.C. § 161. *See* USTA at 4 n.3, 11. The Commission, then, is under an ongoing mandate to review its rules to determine which ones should be eliminated or modified. Clearly, with respect to MFJ equal access mandates, the

The MFJ Equal Access Mandates. As commentors note, the MFJ equal access obligations were meant to impose on Regional Bell Operating Companies ("RBOCs") specific conduct with respect to their relationships to interexchange carriers ("IXC"),[11] at a time when the RBOCs and AT&T were undergoing a complex divestiture. Those Consent Decree obligations were not meant to form the regulatory regime between RBOCs and IXCs into eternity, as Congress expressly determined in 1996.[12] Those provisions only grow increasingly stale as telecommunications markets shift and change. Currently, the marketplace is abundant with businesses that provide not only IXC but local exchange services. Moreover, hundreds of communications suppliers of different varieties are available to consumers (including not only traditional utility companies but cable operators, Voice over Internet Protocol ("VoIP") providers and wireless).[13] In such a competitive environment, retention of the MFJ Consent Decree equal access requirements is patently unnecessary. There simply is no reason to continue in force any parts of the consent decree[ ], [because] . . . the Commission's arsenal of regulatory and statutory

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"impose[d] burdens with no corresponding benefit" means their "continued application can no longer be justified." *See* AT&T at 2.

[10] *See* Verizon at 10.

[11] *See* Time Warner at 4 (citing to the Commission's statement that the equal access requirements were meant "'to preserve the right of [IXCs] to order and receive exchange access services if such carriers elect not to obtain exchange access through their own facilities'") and 5 (noting that the "purpose of equal access requirements was never to preserve long distance providers' access to LECs' networks as an end in itself."); Verizon at 8.

[12] Pub. L. 104-104, Title VI § 601, Feb. 8, 1996, 110 Stat. 143. *Note that* Section 601(c) of the 1996 Act, Pub. L. 104-104, Title VI § 601, Feb. 8, 1996, 110 Stat. 143 is reproduced in "Historical and Statutory Notes" under 47 U.S.C. § 152, and includes language to the effect that any conduct imposed on AT&T by the AT&T Consent Decree shall, after Feb. 8, 1996, "be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended" by the 1996 Act.

[13] *See* AT&T at 1-2, 4-5; Time Warner at 4-5, 6-8; USTA at 4, 5-6, 9-10; Verizon at 2-6, 8-9, Appendix and associated Exhibits.

tools is more than sufficient to deal with equal access problems when and if they arise."[14] Retention of the MFJ requirements is even less persuasive where claims of market dysfunction are but speculative or theoretical.[15]

Equal Access Scripting. Qwest agrees with AT&T and USTA that the Commission should eliminate equal access scripting associated with prior consent decrees. These scripting requirements compel RBOCs (and some local exchange carriers ("LECs")) to read lists of competitive suppliers to their customers[16] -- forced speech essentially promoting the services of others.[17] This government-mandated speech no longer advances any legitimate governmental interest. The record includes no current demonstration that the benefits of equal access scripting outweigh the burdens of such scripting suffered by carriers. No one can reasonably argue that today's consumers are unaware that they have competitive alternatives for IXC services. Nor can it be disputed that equal access scripting insinuates unwarranted costs and inefficiencies into the operations of only some subset of telecommunications carriers[18] -- costs recovered from only the customers of those targeted carriers.

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[14] Qwest 2002 Reply Comments at 2, 4 ("The FCC can promulgate, and has promulgated, rules that are capable of dealing with actual threats to competition[.]"). *And see* AT&T at 3; Time Warner at 8; USTA at 10-11.

[15] *See* NASUCA at 3 (speculating that the current market environment "may provide incentives" for LECs to favor their long-distance operations or might harm local competition, but providing no evidence as to how that might occur or addressing why current remedies would be insufficient to address such a situation should it develop with respect to any particular LEC); Rate Counsel 3 ("With out [equal access] requirements, the RBOCs could exercise [their] dominant status").

[16] *See* AT&T at 3-4; USTA at 11.

[17] *See* USTA at *id.*

[18] *See* AT&T at 3, 6 (estimating that the equal access scripting costs it over $1.5M annually in service representative time alone, and noting there are other associated costs with the requirement (*e.g.*, randomizing the list, sorting the list by state and by wire center, maintaining accurate information in a myriad of separate databases)); USTA at 5-6, 13.

The National Association of State Utility Consumer Advocates ("NASUCA") and the New Jersey Division of Rate Counsel ("Rate Counsel") both urge the Commission to retain equal access scripting. But their arguments are compromised by the fact that they are conclusory,[19] devoid of factual support, and – indeed – contrary to facts put in evidence. As AT&T points out, according to the Commission's own source data, the number of registered IXCs has tripled just since 1993.[20] And as the record demonstrates, competitive alternatives among full service (or bundled) providers is also robust.[21]

With respect to the argument of Rate Counsel that not all consumers want bundles or that some consumers make few long distance calls,[22] the correct regulatory response is to analyze market alternatives to 1+ subscription,[23] not to retain outmoded[24] equal access mandates some two decades after their imposition. Similarly, arguments against the imposition of administrative fees with respect to accounts that generate little revenue when compared to their management

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[19] *See, e.g.*, NASUCA at 2 (arguing that RBOCs and ILECs should continue to be burdened by equal access requirements because "these companies remain dominant in their markets."). *And see* note 15, *supra*.

[20] *See* AT&T at 4 and n.5.

[21] *See* the competitive factual information provided by AT&T at 4 and Verizon at 2-6, 8-9, Appendix and associated Exhibits.

[22] *See* Rate Counsel at 2, 4.

[23] A separate analysis of the services available to persons who make few or no long distance calls would be necessary to create a full record to address the kind of arguments pressed by Rate Counsel. For example, while such callers might encounter administrative fees by their current (or potential) 1+ IXC, such callers clearly have alternative calling mechanisms available to them. For example, the market is full of prepaid calling cards (available at almost any local convenience store) and dial around calling remains an alternative.

[24] *See* USTA at 3.

and billing[25] should be addressed by the Commission in a separate proceeding. The issue has no direct correlation between that issue and the MFJ Consent Decree obligations.

In conclusion, Section 251(g) carried over the equal access provisions of the MFJ only until such time as the Commission rules that those decrees are no longer necessary to protect the public in light of the Commission's existing regulations. That time has long-since arrived. The Commission's current authority to address issues of equal access, carrier discrimination, or market dysfunction, are sufficient to protect the public. The Commission should declare that the MFJ equal access provisions are superseded in their entirety.[26]

Respectfully submitted,

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[25] *See* Rate Counsel at 2-3.

[26] As Qwest stated in 2002, a Commission declaration of this sort would be "more than sufficient to meet the 'explicitly superceded' language of Section 251(g) . . . [which] merely requires conscious supercession by the FCC based on a record and reasoned decision making. [The statute] does not require that the FCC adopt new rules or replace each aspect of the consent decrees with a specific rule." 2002 Qwest Reply Comments at 5, n.7.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY COMMENTS OF QWEST SERVICES CORPORATION** to be 1) filed via ECFS with the Office of the Secretary of the FCC; 2) served via email on Ms. Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, at Janice.myles@fcc.gov; 3) served via email on the FCC's duplicating contractor Best Copy and Printing, Inc. at fcc@bcpiweb.com; and 4) served via First Class United States Mail, postage prepaid, on the parties listed on the attached service list.

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